

Message

From: Caplan, Robert W. [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D02D2CB3F9284E84B1F4618E7E5C869E-CAPLAN, ROBERT]
Sent: 11/6/2018 1:39:13 AM
To: Ingersoll, Andrew (ENRD) [Andrew.Ingersoll@usdoj.gov]
Subject: RE: FM clause

Hey. Just now seeing your email. I assume that we'd have the notice submitted to the Division Director or Branch Chief, although at this juncture, the Regional offices are about to undergo a reorganization so that the regional offices are set up along the same lines as HQs' various program offices. Not sure where people will land, including the air enforcement division, although I assume it will be in the air program office. At any rate, I'll have to ask around to see who has been designated in other CDs. If you have time, you could check a few air CDS at DOJ to see who is listed. It might be a program enforcement officer, but that is a dicey proposition since people move around periodically. That's why I'm saying it might be best to have it go to a position rather than a person. . .

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From: Ingersoll, Andrew (ENRD) <Andrew.Ingersoll@usdoj.gov>
Sent: Monday, November 05, 2018 5:34 PM
To: Caplan, Robert W. <Caplan.Robert@epa.gov>
Subject: FM clause

Bob,

We have this clause in our CD, needs a fax number from you

1. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Drummond shall provide notice orally or by electronic or facsimile transmission to ----, within 72 hours of when Drummond first knew that the event might cause a delay. Within seven days thereafter, Drummond shall provide in writing to EPA and JCBH an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Drummond's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Drummond, such event may cause or contribute to an endangerment to public health, welfare or the environment. Drummond shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Drummond from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Drummond shall be deemed to know of any circumstance of which Drummond, any entity controlled by Drummond, or Drummond's contractors knew or should have known.

Andrew W. Ingersoll

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